

Union of Concerned Scientists

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DELIVERED BY FOIA ONLINE

July 26, 2019

National Freedom of Information Officer
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (2822T)
Washington, DC 20460
(202) 566 - 1667

Re: FOIA Request

Dear FOIA Officer:

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552, and on behalf of the Union of Concerned Scientists, I write to request access to and copies of all communications from March 1, 2019 to July 19, 2019, that contain the words “Dow” or “CropLife America” or “DuPont” or “DowDuPont” or “Lorsban” or “Liveris” “chlorpyrifos” or “NRDC” to or from the following EPA staff:

1. Alexandra Dapolito Dunn
2. Nancy Beck
3. Erik Baptist
4. David Dunlap
5. Charlotte Bertrand

Additional Instructions

The Union of Concerned Scientists (UCS) requests that all fees incurred in connection with the attached request to your agency be waived, because “disclosure of the information is in the public interest and is not primarily in the commercial interest of the requester.” 5 U.S.C. §552 (a)(4)(A)(iii). See below for further justification for our fee waiver request.

If any of the material covered by this request has been destroyed or removed, please provide all surrounding documentation including, but not limited to, a description of the action taken regarding the materials and justification for those actions taken. For any documents or portions you deny due to a specific FOIA exemption, please provide a *Vaughn* Index (*Vaughn v. Rosen*, 484 F.2d 820, 827 (D.C. Cir. 1973), *cert. denied*, 415 U.S. 977 (1974)), including a detailed

justification of your grounds for claiming such exemption and explanation of why the exemption is relevant to the document or portion of the document withheld.

The Union of Concerned Scientists consents to the deletion of any material that would violate an individual's rights under the Privacy Act. We will work with your office to further refine the request if you find any terms too imprecise, conduct searches for unclassified responsive records, or engage in any other reasonable activities that would lessen the agency's burden and costs.

We would prefer to receive the responsive documents in batches as they are collected. Electronic delivery is preferred but hard copies are also acceptable.

Request and Justification for Waiver of Fees

The Union of Concerned Scientists (UCS) requests that all fees incurred in connection with the above request to your agency be waived, because "disclosure of the information is in the public interest and is not primarily in the commercial interest of the requester." 5 U.S.C. §552 (a)(4)(A)(iii). Disclosure of the requested records will contribute significantly to public understanding of the operations or activities of the government.

UCS addresses the six requirements of the Environmental Protection Agency (EPA) regulations regarding public interest fee waivers below:

Factor 1: The subject of the request.

The ability of EPA to carry out its mission to protect human health and the environment is of great interest to the American public. To support that mission, it is imperative that EPA and the Office of Chemical Safety and Pollution Prevention (OCSPP) enforce science-based rules and regulations that protect people from toxic chemicals, such as pesticides. On March 29, 2017, several environmental organizations and a group of states filed a petition requesting the ban of the insecticide chlorpyrifos for agricultural use. On July 18, 2019, EPA Assistant Administrator Alexandra Dapilto Dunn issued an order denying this request. Since scientific studies have shown that chlorpyrifos can have harmful effects on children's brain development, we would like to learn about how EPA made a decision that directly threatens the health of Americans, especially farmworkers.

The information we are seeking is a critical part of understanding how conflicts of interest may have informed EPA's decision and will help hold EPA accountable for actions that undercut the mission of the agency and public health.

Factor 2: The informative value of the information to be disclosed.

The information we are seeking will significantly contribute to a better understanding of government operations and, to UCS' knowledge, is not duplicative or available otherwise in the public domain. The records that are requested will provide greater insight into the way EPA and OCSPP make regulatory decisions on chemicals that will have profound effects on the health of children.

The communications these EPA staff have had with regard to the agricultural use of chlorpyrifos will provide valuable insight to the American public about how this administration plans to approach the regulation of other toxic chemicals, which is vital to protecting the health and wellbeing of the American public. Regulations governing toxic substances such as chlorpyrifos, asbestos, lead, and formaldehyde are the main avenue by which the EPA carries out its mission, and any discussion related to EPA's recent refusal to ban chlorpyrifos will help to clarify and thereby inform the public about the EPA's future ability to protect public health and the environment.

Factor 3: The contribution to an understanding of the subject by the public is likely to result from disclosure.

As discussed below, UCS qualifies as a representative of the news media. Therefore, under 40 C.F.R. §2.107 (l)(2)(iii), it should "be presumed that [UCS] will satisfy" the requirement that disclosure of the requested information must contribute to public understanding.

In addition, the records requested by UCS will contribute to the public's understanding of the workings of the EPA and the OCSPP under the current EPA and White House leadership. The American public is extremely concerned about the lack of action the agency is taking to regulate dangerous substances and is interested in learning more about the direction of the agency and how this new leadership will work to promote—or undermine—the EPA's ability to protect public health and the environment. UCS can and will ensure that the requested records reach a broad audience and contribute to public understanding of how EPA is making decisions regarding the regulation of harmful pesticides and if there are any concerns with the EPA's handling of the regulatory system. We expect that, given industry's reliance on chlorpyrifos, some records may show that EPA leadership is making decisions based on industry influence rather than the health and safety of the American public. After reviewing and evaluating the records, we will work with reporters at major news organizations to bring the content of the documents to the public's attention. In addition, we will make relevant documents publicly available on our website.

Founded in 1969, UCS is a science-based public interest organization with more than 500,000 supporters – including parents, businesspeople, scientists, teachers, and students- throughout the United States. To help further our work of using sound scientific analysis – not political calculations or corporate hype – to create a healthy, safe, and sustainable future, as well as promote scientific integrity in government science, we seek to provide our members and activists, as well as the general public, up-to-date information, news, and commentary on various aspects of science policy.

UCS consistently publishes in-depth reports on topics of critical interest.¹ It also publishes newsletters, fact sheets, blogs and other publications in print and electronic form. Moreover, UCS serves as a resource for the media and testifies before Congress, including on issues related to scientific integrity.

¹ Visit www.ucsusa.org for numerous examples of reports published on a variety of different topics.

UCS maintains a public website, www.ucsusa.org, with science-policy related information and news. Our website is visited an average of 15,000 times each day. In March of 2015, we had over one million unique visitors to our website. Visitors to the website include scientists, teachers, businesspeople, federal and state officials, and other concerned citizens. Moreover, information posted on UCS' website is often linked to websites of other organizations. UCS also has a blog, available at blog.ucsusa.org, and is active on Facebook and Twitter.

UCS has a long history of successfully working with the news media to hold government officials accountable. UCS staff possess detailed knowledge of political interference in science at the EPA.² Our work in this area has been the subject of major congressional hearings³ and news coverage⁴.

Factor 4: The significance of the contribution to public understanding.

Disclosure of the requested records will contribute significantly to the public's understanding of the direction of the EPA and the priorities of the current administration. The documents will provide insight into how EPA considers industry influence when addressing the regulation of toxic pesticides and other substances. They will also provide information on EPA's consideration – or lack thereof – of the disproportionate impact inaction on chlorpyrifos has on farming communities and communities of color. The American public is interested in understanding whether or not the EPA will remain true to its mission under this administration.

The disclosure of the requested documents will provide the public a better understanding of the direction of President Trump and the EPA when it comes to protecting public health and the environment.

Factor 5: The existence and magnitude of a commercial interest.

UCS is a non-profit, non-partisan, public interest organization chartered under IRS Code §501 (c)(3) as a non-profit, educational and charitable organization. We seek to serve the public by working for a healthy environment and a safer world. We do this by combining independent scientific research and citizen action to develop innovative, practical solutions and to secure responsible changes in government policy, corporate practices, and consumer choices. UCS is actively involved in working with government agencies, elected officials and the public toward solutions to ensure that the best possible science is available for policy-makers to use in crafting the policies that protect human health and the environment. One research aspect of this effort is focused on how freely and openly scientific information is communicated by federal agencies, like the EPA.

UCS provides its members and the public with information on science policy, primarily through

² See <http://www.ucsusa.org/our-work/center-science-and-democracy/promoting-scientific-integrity/interference-at-the-epa.html> for more information.

³ See <http://www.gpo.gov/fdsys/pkg/CHRG-110hhrg34913/html/CHRG-110hhrg34913.htm>.

⁴ See <http://www.washingtonpost.com/wp-dyn/content/article/2008/04/23/AR2008042303074.html> and <http://bigstory.ap.org/article/groups-accuse-epa-muzzling-outside-advisers>.

its website, www.ucsusa.org, which is updated daily with the latest news and information, including actions involving and related to federal agencies, such as the EPA. UCS seeks the requested information for the purpose of disseminating it to its members and the general public, free of charge. UCS receives no corporate funding, nor does it receive funding from any entity with a financial stake in the outcome of any regulatory action that may be taken.

Factor 6: The primary interest in disclosure:

Because UCS has no commercial interest in the disclosure, the release cannot “primarily” be in UCS’ commercial interest. The EPA outlines that a public interest “fee waiver or reduction is justified where the public interest standard is satisfied and the public interest is greater in magnitude than that of any identified commercial interest in disclosure.” As explained above under “Factor 5,” UCS has no commercial interest that would be furthered by the requested disclosure, while the public interest served by disclosure as described above is substantial. UCS thus meets this final criterion of a public interest fee waiver.

Request for Recognition as a Representative of the News Media

UCS qualifies for a fee waiver under the FOIA and EPA regulations. UCS is also entitled to recognition as a representative of the news media under 5 U.S.C. § 552(a)(4)(A)(ii). Thus, if the EPA denies the requested fee waiver, any fees associated with the processing of this request should be “limited to reasonable standard charges for document duplication.” *Id.* U.S.C. §552 (a)(4)(A)(ii)(II).

UCS does not seek the requested records for commercial purpose. It also regularly publishes reports and disseminates its reports and other materials via publications, its website, and newsletters. It also contributes to and maintains a blog, as well as an active Facebook and Twitter profile. As these facts demonstrate, UCS qualifies as a representative of the news media because it “gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into distinct work, and distributes that work to an audience.” *Id.* U.S.C. § 552(a)(4)(A)(ii)

The Requesters’ Public Interest Status and History

The Union of Concerned Scientists (UCS) is a non-profit, non-partisan, public interest organization chartered under IRS Code §501 (c)(3) as a non-profit, educational and charitable organization. We seek to serve the public by working for a healthy environment and a safer world. We do this by combining independent scientific research and citizen action to develop innovative, practical solutions and to secure responsible changes in government policy, corporate practices, and consumer choices.

UCS is actively involved in working with government agencies, elected officials and the public toward solutions to ensure that the best possible science is available for policy-makers to use in crafting the policies that protect human health and the environment. One research aspect of this effort is focused on transparency and accountability in government.

Dissemination of the Requested Information

In our efforts to promote respect for federal scientists and the work they do, UCS works closely with Members of Congress, the media, and the public to alert them to any abuses of science in the federal policy-making process. The documents and other materials provided to UCS in response to this FOIA request will be used in connection with a campaign aimed at informing key decision-makers at the federal level, the general public, and self-selected subscribers.

The combined circulation and viewer-base of our national, regional, and self-subscribed outlets ensure that the information will, indeed, be widely distributed to diverse segments of the public who will benefit from the authorized disclosures concerning federal policy-making. As a consequence of this dissemination, public understanding and trust of government operations will certainly be enhanced.

Non-commercial use of the Requested Information

Disclosure of this information by UCS is in no way connected with any commercial interest since UCS is a non-profit, tax-exempt organization under §501 (c)(3) of the IRS Code. The information we are seeking is crucial to advance public knowledge and will not be put to any commercial use.

Please be reminded that under the Freedom of Information Act, we are entitled to a response to this request within twenty working days. Should this request be denied for any reason, we ask that a detailed explanation be provided along with the name of the person to whom administrative appeals should be addressed. If you have any questions regarding this request we would appreciate you contacting us directly by telephone or email, rather than by mail.

* * *

Thank you in advance for your assistance and cooperation.

Sincerely,

Catherine Xu
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